THE PRACTICE OF LAW IN QUEBEC PROVINCE, CANADA.

THERE are not more than one hundred and forty practicing English lawyers in the whole Province but they practically all read French and the greater number speak French sufficiently well to conduct business or examine a witness in Court. Lawyers from the other Provinces seldom seek admission to the Quebec Bar unless they are prepared to specialize in some branch of law in which they have gained a national reputation, or enter some established firm. Lawyers of other Provinces seeking to become members of the Quebec Bar are asked to pass an oral examination on the Statute Law of the Province of Quebec.

Practically all the French-Canadian advocates speak and read English and many of them are forceful and fluent speakers in English and very effective with judges and juries. Thinking and speaking in both languages seems to have sharpened their wits. The same can be said of English lawyers who speak French, as some of the ablest lawyers in Canada are found among the English-speaking-French and French-speaking-English lawyers in the Province of Quebec.

The judges are mainly French-Canadians but with a fair number of English, Scotch and Irish, all of course speaking French fluently.

In the City of Montreal, under the supervision of a Committee of the Montreal Bar Council, is the Advocates' Law Library which is recognized as a very useful, well supplied and well conducted Library.

In addition to the General Bar Council, which is an incorporated body, there are seven District Bar Councils, also incorporated. The head of the General Council and of the District Councils is called the "Batonier," and in the Montreal section English and French leaders of the Bar are elected Batonier alternately. On the walls of some of the larger rooms in the Montreal Court House hang portraits done in oils of past Batoniers.

The General Bar Council makes rules for the discipline of the Bar and is very strict and prompt in seeing that the rules are obeyed. Recently an advocate kept an amount he had collected for a client and gave the client credit on account of a bill of costs (about which there had been a dispute) in another matter. The advocate was suspended although dishonesty was not charged or suggested.

An advocate cannot "carry on any handicraft, industry, trade or

commerce; discharge the duties of a bailiff or constable; fill the position of a cashier, manager, clerk or book-keeper to an industrial establishment, a commercial firm, a railway or steamship company, or any similar concern; engage in insurance or real estate business; act as collector, money-lender or agent of money-lender on notes or pledges; be a musician, surveyor, architect or civil engineer."

An advocate cannot be a notary. A notary cannot be an advocate. If, as is occasionaly the case, both examinations are passed there must be an election of the profession to be practiced. A notary of this Province is considered a professional man, and has a very different standing compared with a notary public in the United States or in the English Provinces, getting his rights and privileges, which are many, under an act under the title "The Liberal Professions." While the Old French Notarial System is largely followed it can hardly be said of the notaries of the principal centres as was said of the notaries of the large centres of France "that they are the elite of the two professions." "Notaries are public officers, whose chief duty is to draw up and execute deeds and contracts, to which the parties are bound or desire to give the character of authenticity attached to acts entered into under public authority, to assure the date thereof, to have and preserve the same in safe keeping, and to deliver copies or extracts therefrom." As much value is accorded in evidence to documents certified by a notary as to copies of Court proceedings or a copy of a Court judgment certified by a Judge or the clerk of the Court under seal. "British subjects only, of the male sex, are admitted to study the notarial profession," and every notary before commencing to practice must take the oath of office and allegiance before a Judge of the Superior Court. He is appointed for life, and his records, safes, and law-books are not liable to seizure. Fees are prescribed for searches and certified copies of a notary's records, and a notary may transfer his records to another notary who is then entitled to such fees. Only a practicing notary can sue for any fee for drawing up and preparing writings affecting real property and requiring to be registered, and passed in a municipality wherein there is a practicing notary resident during the preceding six months. On the death of a notary his records are transferred to the office of the Prothonotary of the Superior Court of his district, and his widow or heirs receive one-half of the fees for a period of ten years.

Students become articled and pass a prescribed examination before being admitted as notaries.

Notaries may prepare petitions and submit them to the Judge or Prothonotary in certain non-contentious proceedings.

Quebec Province notaries do not consider a notary public of any of the other provinces or of one of the States as being more than a certifying officer.

Notaries must enter consecutively the dates, number and nature of all deeds passed by them, and the names of the parties, which record is called their "repertories."

Notaries cannot also be physicians or land-surveyors, and if they become priests or ministers they cease to be notaries.

There is some slight similarity in the relation between advocates and notaries, to the English system of barristers and solicitors. Notaries, however, do not appear in even the inferior courts and only have the right to prepare and present petitions in Chambers in a very few non-contentious matters.

In the English provinces, many even of the largest law firms have a department to handle the loaning of money on real estate mortgages. In Quebec most notaries advertise money to loan. As already noticed, by the rules of the Bar Council, advocates cannot hold themselves out as money-lenders, so that this sometimes very lucrative business is controlled by notaries. Notaries probably draft most of the wills (although most of the important wills are drafted under the advice of an advocate) and this results in the notary being frequently appointed a trustee or executor. So it will be seen that the notaries practically control what is sometimes called "Estate Business."

It may not be out of place just here to say that among other forms, wills may be made "in the form derived from the laws of England," the formalities being set out in the Code. A will signed before a notary does not have to be probated as it is already "authentic." It is also claimed there is small chance of a will kept in the office of a notary being mislaid.

While this is interesting, the outside lawyer who considers practicing under Quebec Law is anxious to know how much opportunity he will have to work under laws with which he is familiar. He will be glad to find such a large number of familiar subjects as the following:

The Public Law.
The Criminal Law.
The Law of Merchant Shipping and Navigation.
The Law of Bills, Notes and Cheques.
The Law of Banks and Banking.
The Law for the Regulation of Trade and Commerce.
The Law of Patents and Copyrights.
The Law of Bankruptcy.

The Law of National Defence, of the Postal Service and of the Census.

The Law of Customs, Excise and Indirect Taxes.

The Law of Currency, Interest, Legal Tender and Weights and Measures.

The Law of Fisheries, Quarantine, Ferries not entirely within the Province, Lighthouses and Beacons.

The Law of Indians and Indian Reserves.

The Law of Naturalization.

The Law of Marriage and Divorce, but not the Solemnization of Marriage.

The Law of Insurance.

The Law of Railways.

The Law of Companies.

The conquest of Canada in 1763 had the effect of substituting the Public Law of England for that of France, but Private Law remained the same in accordance with the well known policy of England. As is well known, even within the British Isles there are a number of systems of Private Law and in the United States there has been Louisiana and more recently Porto Rico, Cuba and the Philippines.

There has been much discussion as to whether the French Public Law was abrogated after the Cession, but it has never been questioned that English Criminal Law at once came in force. However, The Quebec Act, Aug. 1st, 1866, provided "that in all matters of "controversy relative to property and civil rights, resort shall be had "to the laws of Canada as the rule for the decision of the same."

The "Civil Code" and the "Code of Civil Procedure" contain the law as to "property and civil rights" and codify the old French Law of Quebec as modified by statutes, and also codify,—but only as to its broad principles,—the Commercial Law of the Province, which is derived from English as well as from French sources. The Code Napoleon was taken as a model in arrangement and language.

Judge HOWE of New Orleans, in his "Studies in the Civil Law" refers[1] to the Quebec Civil Code as "an excellent specimen of juristic work" and in discussing the Roman and Civil law in America gives considerable space to the Quebec Civil Code. He also gives an interesting account of the establishing by France of that other great colony to which La Salle gave the name of Louisiana and points out the similarity of its legal history to that of Quebec. He also reminds us that the Louisiana of La Salle was not bounded by the

[1] (Ed. 2), p. 135.

limits of the State which now bears that name, but that it extended, in theory at least, "from the Gulf of Mexico to the dim regions which now constitute British America, and westwardly to the Rocky Mountains, and possibly to the Pacific." He also refers[2] to the curious fact that the Custom of Paris was in force in theory in Michigan and in Wisconsin down to the year 1810, when the legislature of Michigan declared that it did not know what the Custom of Paris was and that there was no easy means of finding out, and enacted a statute[3] abolishing the Civil law and "adopting the principles of law which prevailed in the other States of our Country so far as applicable to the situation."[4]

French and English authorities are referred to, depending on the source of the law under discussion, and American cases and writers are often mentioned.

In the proof of commercial matters (by statute) the rules of the Law of England are to be resorted to when no provision is found in the Code. It is stated to be the tendency of the Quebec Courts in commercial cases to follow the opinion of the House of Lords in *Dovey* v. *Cory*,[5] which was as follows: "Their Lordships thought "that, in the absence of any legislation in force in Quebec incon- "sistent with the law as acted upon in England, and in the absence "of any evidence of custom and course of business to the contrary, "the Court of King's Bench was right in accepting the English rul- "ings, because they were based, not upon any special rule of English "law, not upon any circumstances of a local character, but upon the "broadest considerations of the nature of the position and exigen- "cies of business."

But, notwithstanding decisions holding that the source of Quebec Commercial Law is English, learned authorities say that the Quebec system of Commercial Law is neither French nor English, but that the Courts have considered authorities from all commercial countries and adopted the rules which appeared to be best suited to the conducting of mercantile business in Quebec.

In passing it may be mentioned that, as in France, the notes of commentators are called "the doctrine," and the decisions of Courts "the jurisprudence."

In interpreting the Code when the source of the law is French the French system is followed and the opinions of recognized commen-

[2] Ibid, p. 134.

[3] I Mich. Terr. Laws, 210.

[4] The author refers in this connection to Lorman v. Benson, 8 Mich. 18, 25; and Coburn v. Harvey, 18 Wis. 156, 158.

[5] [1901] A. C. 477.

tators are preferred unless the jurisprudence is settled. There is a large amount of jurisprudence settling the law in Quebec and as to which nothing definite is found in the Code, as for instance, the Law of Libel, which differs from both the English and the French Law.

Practice in the Courts is regulated by the Code of Civil Procedure which, authorities state, does not resemble the French Code of Civil Procedure in anything like the same degree which the Quebec Civil Code resembles the Code Napoleon. The Code of Procedure is said to have borrowed largely (as was the case in preparing the Code of Procedure of New York State) from the Code of Civil Procedure of Louisiana, and in addition includes such remedies as writs of injunction, mandamus and prohibition, all of English origin. There are a number of annotations of the Code of Civil Procedure, some in French, some in English and others in both French and English. The tendency in connection with practice I understand to be to cite English cases, and most law offices contain the latest English books on practice.

Here you may have the novel experience of issuing a writ and claim using English and receiving a defence in the same action in French.

The Municipal Law which came into force in 1871 and the Law of Civil Procedure are under the Legislative authority of the Province, but are not included in the Civil Code.

It may be mentioned here that the reports of cases are sometimes in French and sometimes in English, if English persons are the litigants usually the case is reported in English.

In the trial of commercial actions the jury is made up of merchants or traders only, unless one of the litigants exercises his right to have one-half only of the jury merchants or traders. If the parties are of different origin either of them may demand a jury of equal numbers of persons speaking the French language and of persons speaking the English language, and each advocate is allowed to address the jury in each language.

Private International Law is treated in very brief outline in the Civil Code and there has been a tendency to include it as of the Public Law, but learned writers are strongly opposed to this view. (See "The Conflict of Laws" by E. Lafleur, K. C., Professor of International Law, McGill University).

It would be very discouraging to a common law lawyer if on the intricate subject of Private International Law he had to very often refer to French law (not modern French law, but the law before 1763), and it is comforting to find it stated by the recognized author-

ities that there is now for the Quebec Courts a considerable body of settled jurisprudence in this branch of the law.

There is no Divorce Court in the Province, but there is provision in the Civil Code for a judicial "separation from bed and board."

When one has a fair knowledge of the leading principles of Roman Law and understands the meaning of its technical terms, which at first appear alien and mystical, he may read the Quebec Codes with interest and he will find that, after all, there is not so great a difference between the Civil law and the Comon law, however much there may be variation in forms of procedure and variety of expression in the opinions of judges. In the elementary principles essential to the administration of justice between man and man the leading doctrines are found to be much the same as the Common law.

In my recent reading, I found "The Scope and Interpretation of the Civil Code of Lower Canada" published in 1907 by Dean Walton of the Faculty of Law, McGill University, particularly interesting and instructive.

HOWARD S. ROSS.

MONTREAL.